

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES

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TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 1 -- COVERAGE

001 Collective Bargaining Agreements. Employees subject to the Nebraska Association of

Public Employees, Local 61 of the American Federation of State, County, and Municipal Employees (NAPE/AFSCME) Bargaining Agreement with the Department of Education are not covered by these rules to the extent that wages, hours, and other terms and conditions of employment are provided for by the Agreement.

002 Department Rules and Policies; Conflicts. These rules shall not be construed as limiting, in any way, the power and authority of the Commissioner to make policies governing the conduct of departmental employees and the performance of Department functions, provided that such Department policies shall be consistent with, and limited by, the provisions of these rules and any collective bargaining agreements. Provisions of the Nebraska Department of Education Personnel Rules, or the provisions of a collective bargaining agreement, supersede all Department policies.

003 Availability. Each employee has the right to examine these rules. A copy is available for examination in the Human Resources Office.

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CHAPTER 2 -- MANAGEMENT AUTHORITY

- 001 The Department retains all of its inherent rights, functions, and responsibilities with the right to determine and make decisions, except where those rights may be modified, restricted, or limited by these rules. The Department retains the right to determine the manner in which the operations of the Department are to be conducted except where those rights may be modified, restricted, or limited by these rules.
- 002 It is recognized that these management rights shall include, but not be limited to, the following:
- 002.01 To implement and maintain a classification system and classify employees pursuant to Chapter 6 of this Title;
 - 002.02 To hire, promote, demote, transfer, assign, train, or retain employees in positions within the Department;
 - 002.03 To establish and maintain reasonable work rules;
 - 002.04 To suspend, demote, terminate, or take other appropriate disciplinary action against employees for just cause;
 - 002.05 To schedule work and promote its accomplishments through managing, directing, and assigning duties and work schedules to employees;
 - 002.06 To determine the mission, goals, and objectives of the Department;
 - 002.07 To determine services to be rendered, operations to be performed, technology to be utilized, or matters to be budgeted;
 - 002.08 To determine the overall methods, processes, means, or personnel by which operations are to be conducted;
 - 002.09 To determine the type and number of employees to be employed and, to lay-off employees in the event of lack of work or funds or under conditions where the continuation of such work would be inefficient or nonproductive; and,
 - 002.10 To determine, in accordance with the Constitutional and statutory mandates, mission, and goals of the Department, the personnel, methods, and means necessary to efficiently fulfill that mission including, but not limited to, implementing a budget and contracting for, altering, curtailing, or discontinuing any goods or services.

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CHAPTER 2 -- MANAGEMENT AUTHORITY

002.11 To dismiss an employee from employment in the event the employee is unable to perform the essential functions of the position due to physical or mental impairments even with reasonable accommodations.

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CHAPTER 3 -- DEFINITIONS

001 Board - shall mean the State Board of Education.

002 Commissioner - shall mean the Commissioner of Education.

003 Department – shall mean the State Department of Education, which is comprised of the Board and the Commissioner.

004 Deputy Commissioner - shall mean the Deputy Commissioner of Education.

005 Employee - shall mean any person who works for the Department and receives a state pay warrant. This definition is subject to the limitations of Chapter 4, Section 002 of the Nebraska Department of Education Personnel Rules.

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CHAPTER 4 -- EMPLOYEE SELECTION

001 Hiring Process. The Board, upon the recommendation of the Commissioner, has the final hiring authority for all professional staff. Selection of support staff shall be at the discretion of the appropriate Leadership Council Member who shall have the final hiring authority.

002 Employment Categories.

002.01 Full-Time. Full-time employees are required to work, as a minimum, forty (40) hours per week on a permanent, ongoing basis.

002.02 Part-Time. Part-time employees are required to work fewer hours than full-time employees on a permanent, ongoing basis. Work schedules may fluctuate by week, month, or season. Part-time employees earn benefits on a prorated basis. To be eligible for insurance benefits, employees must be hired to work at least half-time (20 hours per week).

002.03 Temporary Employee. Temporary employees are those employees hired through a temporary employment agency for a limited period of time to accomplish a specific task. Temporary employees may be separated, at any time, without notice or grievance rights. Temporary employees do not receive benefits except as provided by Neb. Rev. Stat. §84-1601 et seq. A temporary position may be a full-time or part-time position. Employment in a temporary position shall not count toward a service date or original probationary period.

002.04 Fixed-Term. A fixed-term employee is an employee hired in a fixed-term position. A fixed-term position is a position which, due to the funding source, has a predetermined duration of employment which is designated at the time of hire subject to the continuation and availability of funding. Fixed-term positions may be worked on a full-time or part-time schedule and are subject to all the provisions of these Personnel Rules except for the provisions of Chapter 12, Sections 003 through 009.

002.05 Contract Employee. Contract employees are hired pursuant to an individualized written contract. Terms of the employment are governed by the contract. Contract employees do not receive benefits except as provided by Neb. Rev. Stat. §84-1601 et seq. Contract employees do not have grievance rights.

003 Service Date. The service date is the date of hire by the State of Nebraska for a new employee. The service date must be adjusted to reflect suspensions without pay, or unpaid leaves of absence which exceed fourteen (14) calendar days (except military leave).

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CHAPTER 4 -- EMPLOYEE SELECTION

Employees who left state service for other than disciplinary reasons, and return after July 1, 2001, following a break in services of less than five (5) years, shall be given credit for previous state service by having their service date reinstated minus the amount of time absent.

004 Equal Opportunity Employment and Nondiscrimination. The Department prohibits the following employment practices which are unlawful under Neb. Rev. Stat. §§48-1104 and 48-1004:

004.01 To fail or refuse to hire, to discharge or to harass any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, disability, marital status, or national origin; or

004.02 To limit, advertise, solicit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee, because of such individual's race, color, religion, sex, disability, marital status, or national origin; or

004.03 To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

004.04 To willfully utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against such individuals because of their age.

005 ADA Compliance. It is the policy and practice of the Department to comply with the Americans with Disabilities Act (ADA) and to ensure equal opportunity in employment for all qualified persons with disabilities. The Department is committed to ensuring that there is no discrimination in any terms, conditions or privileges of employment. Reasonable accommodation is available to all employees and applicants. Requests for reasonable accommodations must be forwarded to the Human Resources Office.

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CHAPTER 5 -- PROBATIONARY PERIODS

001 Exempt Employees. Employees occupying positions which are exempt from time and one-half overtime compensation shall serve a probationary period of twelve (12) months. Such period may be extended by up to six (6) months not to exceed a total of eighteen (18) months

upon written notification to the affected employee by the appropriate Leadership Council Member. Reasons for such extension shall be made known to the employee. Upon approval of the appropriate Leadership Council Member, an employee may be moved to permanent status at any time during the probationary period.

002 Non-Exempt Employees. Employees occupying positions for which time and one-half overtime compensation is paid, shall serve a probationary period of six (6) months. Such probationary period may be extended by up to six (6) months not to exceed a total of twelve (12) months upon written notification to the affected employee by the appropriate Leadership Council Member. Reasons for such extension shall be made known to the employee. Upon approval of the appropriate Leadership Council Member, an employee may be moved to permanent status at any time during the probationary period.

003 Transfer During Probation. An employee who is transferred by promotion, demotion, or lateral move, within the Department, while serving a probationary period, may have his/her probationary period extended, at the discretion of the appropriate Leadership Council Member.

004 Probation Pursuant to Moving into a New Position. An employee accepting promotion, lateral transfer, or a demotion, shall be placed on probation for a period of time as set forth in Sections 001 and 002 of this Chapter to determine his/her ability to perform the job. If the employee is, in the opinion of the Department, not performing satisfactorily in the new position during the probationary period, the employee shall, if the position is still available, be reverted to the employee's previous position and pay rate. If the previous position is no longer available, the Department shall make every reasonable effort to place the employee in a vacant position of a similar classification with the same pay rate as the employee received prior to the promotion or lateral transfer. If no such vacancy is available, the Department may place the employee in a vacant position in a lower classification according to the provisions in Chapter 6, Section 004 or may terminate the employee for cause. The Department shall not be required to utilize the disciplinary process to revert an employee back to the employee's former position or a vacant position in the same geographic area (thirty [30] miles from the current work site) equivalent to the former position's salary grade. The Department shall document efforts to provide the promoted employee with performance improvement counseling when utilizing this provision.

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CHAPTER 5 -- PROBATIONARY PERIODS

005 Employees on a part-time schedule may have their probationary period extended according to the provisions in this Chapter in order for the supervisor to have additional opportunities to observe the employee. Probationary periods may also be extended to allow for adequate observation opportunities in cases where employees have been absent for significant periods of time.

- 006 Termination. Employees serving a probationary period may, upon the recommendation of the immediate supervisor, and with the approval of the appropriate Leadership Council Member, be terminated without cause or recourse at any time during the probationary period.
- 006.01 If at any time during the probationary period it is determined that the services of the employee have not been acceptable, or if the employee does not successfully pass the Department's background screen, the appropriate Leadership Council Member shall so notify the employee in writing of the date services are to be terminated.
- 007 Performance Appraisals. Performance appraisals for probationary employees shall be scheduled at the discretion of the employee's supervisor.
- 007.01 The appraisals may contain a description of problem areas, improvements needed, and any positive points concerning the employee's performance.
- 007.02 The absence of any appraisals under this section shall not prohibit nor delay the ending of a successful probationary period and the establishment of a permanent appointment.
- 008 Permanent Appointment. Permanent appointment of full-time or part-time probationary employees shall begin on the day following the day ending the probationary period, unless notice of extension has been given to the employee in writing prior to such time. In the event of an extension of the probationary period, permanent appointment shall begin on the day following the day ending the extension of the probationary period.

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CHAPTER 6 -- CLASSIFICATION PLAN

001 General. The Human Resources Office shall maintain a copy of all classification specifications used by the Department. Classification specifications shall be available to any employee for examination.

002 Classification Review. An employee or their supervisor may request a review of the employee's position for proper classification at any time providing the position has not been reviewed within the previous six (6) months. The employee's supervisor(s) may waive the six (6) month requirement. An employee may make the request to the Department's Human Resources Office through their immediate supervisor or a supervisor may make the request directly to the Department's Human Resources Office. Following such request by an employee or supervisor, the Human Resources Office shall review the classification of such employee. Such review by the Human Resources Office will include the review of a Position Description Questionnaire completed by the employee and reviewed by the employee's supervisor(s), and the appropriate Leadership Council Member. The Position Description Questionnaire shall be provided to the employee within five (5) work days of such request.

002.01 Employees. An employee shall have fifteen (15) work days to complete the Position Description Questionnaire, obtain supervisor review, and return it to the Human Resources Office.

002.02 Human Resources. The Human Resources Office shall have thirty (30) work days from the receipt of the completed Position Description Questionnaire to complete the review of the request for classification change and make recommendations. A copy of the Human Resources Office review and recommendations shall be forwarded to the supervisor(s), the appropriate Leadership Council Member, to the employee and the Classification Panel. The supervisor(s), the appropriate Leadership Council Member, and the employee shall then have an opportunity to provide comments and/or documentation to the Human Resources Office in response to the recommendations within ten (10) work days.

002.03 Request. At this stage of the process, the employee, supervisor(s) and/or the appropriate Leadership Council Member have the right to request and meet with the Classification Panel. The Human Resources Office shall forward all information to the Classification Panel. The Classification Panel has the right to request that the employee, supervisor(s), or the appropriate Leadership Council Member, meet with them during the review process to provide comments about the request.

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CHAPTER 6 -- CLASSIFICATION PLAN

002.04 Classification Panel. The Classification Panel, within ten (10) work days, shall

review the findings of the Human Resources Office and all other information presented and shall make a recommendation to the Deputy Commissioner.

002.04A The Classification Panel shall be made up of five (5) members chosen by the Department. All members shall undergo training provided by the Human Resources Office concerning the classification system. The Department shall designate one alternate to serve on the Classification Panel when a regular member is unable to attend or when a regular member is unable to vote. Recommendations from the Classification Panel shall be decided by a majority vote.

002.05 Deputy Commissioner. The Deputy Commissioner shall have fifteen (15) work days after receiving the recommendation from the Classification Panel to make a final decision. A copy of the action taken by the Deputy Commissioner shall be forwarded to the Human Resources Office, the Classification Panel, the supervisor(s), the appropriate Leadership Council Member, and the employee within five (5) work days of the decision.

If the Deputy Commissioner's decision is made on or before the 15th of the month, and a pay adjustment is warranted, the pay adjustment shall be effective as of the 1st day of the current month. If the Deputy Commissioner's decision is made after the 15th of the month, the pay adjustments shall be effective as of the 1st day of the next month.

002.05A The time requirements in this Chapter may be extended by agreement between the employee and the Deputy Commissioner in cases where additional time is needed in order to access relevant information during the review process. Pay adjustments may be made retroactive by order of the Deputy Commissioner.

003 Promotions. In situations where the employee's job duties have changed significantly, the employee may be reclassified to a new classification at a higher paygrade as a result of the classification review process.

003.01 An employee who is reclassified to another classification at a higher paygrade shall receive a five percent (5%) salary increase for moving up one paygrade, a seven and one-half percent (7.5%) salary increase for moving up two paygrades, or a ten percent (10%) salary increase for moving up three or more paygrades. The new salary shall be at least at the minimum rate of the new paygrade, but no more than the maximum rate of the new paygrade.

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003.01A The appropriate Leadership Council Member may recommend to the Deputy Commissioner a pay increase greater than would be provided by this section. The Deputy Commissioner's decision will be final.

004 Demotions. In cases in which the employee accepts a demotion to avoid being laid off, voluntarily requests a demotion, or, is reclassified to a lower paygrade pursuant to the review process, a non-disciplinary demotion may result. In cases of demotion to avoid layoff, the employee shall have the right to elect which alternative under Chapter 12, Section 005 he/she will take. The right to elect shall be granted to employees in accordance with provisions of Chapter 12.

004.01 An employee who is demoted, either voluntarily or involuntarily, from a higher paygrade to a lower paygrade, shall have his/her pay reduced by five percent (5%) for demotions of one paygrade, seven and one-half percent (7.5%) for demotions of two paygrades, or ten percent (10%) for demotions of three or more paygrades. Under no circumstances would the employee's salary be less than the minimum rate of the new paygrade or greater than five percent (5%) above the maximum rate of the new paygrade.

004.01A The appropriate Leadership Council Member may recommend to the Deputy Commissioner a pay decrease less than would be provided by this section. The Deputy Commissioner's decision will be final.

005 Salary for Vacant Position. Employees who apply for and are selected as the successful applicant to fill a vacant job opening that was posted, shall be subject to the same salary range that was identified on the posting for all applicants. Employees are not entitled to retain their current salary level if they accept the offer to fill the vacancy. The salary provisions contained in Section 003 and Section 004 of this Chapter do not apply to such a situation.

006 Loss in Pay. No employee shall, as a result of Department action, suffer a loss of pay through a promotion or transfer to a position of the same classification or through an involuntary, non-disciplinary transfer to a differently classified position in the same paygrade. This provision shall not apply in layoff situations.

007 Service Date. Promotions, transfers, or demotions shall not change an employee's service date.

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CHAPTER 6 -- CLASSIFICATION PLAN

008 Pay During Temporary Transfer. When an employee performs the duties of a position in a higher paygrade than the classification paygrade currently held by the employee, the employee shall receive a temporary pay increase to the minimum salary of the higher paygrade or an increase in accordance with Section 003.01 of this Chapter, whichever is higher but in no case shall the employee receive a pay reduction. Such temporary pay increase shall apply only when the employee has been requested to perform the duties of someone at a higher paygrade, and when the period of time in which the employee is

performing the duties exceeds ten (10) work days.

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CHAPTER 7 -- SALARY ADMINISTRATION

- 001 Pay Plan. Employees are placed in an assigned position and paygrade of a classification and pay plan approved by the Deputy Commissioner. The pay plan may provide scheduled salary increases including, but not limited to, annual and market salary adjustment increases.
- 001.01 Horizontal Movement. The Deputy Commissioner may distribute salary increases to employees who meet established criteria as necessary to address internal/external inequities and recognize noteworthy performance. The salary increases will be included in the employee's regular rate of pay and base salary.
- 001.02 Merit Stipends. Upon receiving a recommendation from the appropriate Leadership Council Member, the Deputy Commissioner may distribute merit stipends to recognize employees, with at least two (2) years of service with the Department, who have demonstrated exemplary performance or who have completed temporary assignments that required time, skill and effort beyond the normal scope of the employee's position. The stipend will be a one-time payment, above and beyond the regular rate of pay. The stipend will not become part of the employee's base salary.
- 002 An employee who, on the effective date of a scheduled pay increase, is under suspension with pay, suspension without pay, or administrative probation, shall not be provided the pay increase until the employee satisfactorily completes the disciplinary action except that no employee shall be paid less than the hiring rate of pay established for the employee's paygrade in effect on the effective date of the last pay increase.
- 003 If a suspension is for investigative purposes and the employee is subsequently determined not to be subject to disciplinary action, the employee shall be entitled to the appropriate pay rate increases retroactive to the date the pay rate increases would have been granted had not the suspension been in effect.
- 004 Monthly rates of pay will be rounded to the nearest cent and hourly rates of pay will be rounded to the nearest tenth of one cent.
- 005 Release of Payroll/Expense Warrants. Payroll and expense warrants will be released to employees named on the warrant or to the person designated by the employee in writing. In case of employee illness or injury, warrants may be released to immediate relatives who do not have a note of authorization but have proof of identification. Immediate relatives shall be considered as: spouse; children including step, adopted, and foster children; parents; and, parents of the spouse.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 8 -- OVERTIME

001 Exempt and Non-Exempt Defined.

001.01 Exempt employees shall mean employees who, by virtue of their primary duties and responsibilities, are professional, executive and/or administrative under the provisions of the Fair Labor Standards Act and are thereby exempt from overtime compensation payment and/or time off in lieu of such payment.

001.02 Non-exempt employees shall mean employees who are eligible to receive compensatory payment or time off for overtime.

002 FLSA Status Determination. The Human Resources Office shall determine whether or not each position in the Department is exempt or non-exempt under the Fair Labor Standards Act. When a new position is created or an existing position changes, the appropriate Leadership Council Member shall contact the Human Resources Office to request a review of the exempt or non-exempt status. The Human Resources Office shall determine whether or not the position is exempt.

003 Overtime Approval. No overtime shall be worked by non-exempt employees without the prior approval in writing of the appropriate Leadership Council Member and the immediate supervisor.

004 Overtime Compensation Options. Non-exempt employees who accumulate more than forty (40) hours of compensable work time in a work week, shall be eligible for overtime compensation. The method of compensation shall be at the discretion of the appropriate Leadership Council Member and the immediate supervisor. The two (2) options for such compensation are:

004.01 Payment of a sum equivalent to one and one-half (1-1/2) times the hourly rate of pay for time actually worked in excess of forty (40) hours. Payment for overtime hours shall be calculated at the hourly rate that was in effect for overtime at the time excess hours were actually worked.

004.01A The hourly rate of pay shall be computed by dividing the annual rate of pay by the number of hours the employee is normally responsible for per year. Such payment shall be made at the end of the pay period in which it was earned, if administratively feasible, or at the end of the following pay period.

004.02 Compensatory time off when taken in lieu of pay shall be calculated at time and one-half (1-1/2) unless the employee has actually worked less than forty (40) hours during the work week. If the employee has actually worked less than forty (40) hours during the work week, compensatory time off shall be calculated at straight time. Paid vacation, sick, or bereavement leave shall not be counted as work hours for overtime purposes.

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004.02A Compensatory time off shall be used in the subsequent sixty (60) calendar day period following the date the hours were worked, unless such period is extended by the Department (within limits established in Section 004.02B of this Chapter).

004.02B Employees who worked overtime hours between July 1, 2006 and June 30, 2007, shall either be provided time off or be paid by June 30, 2007. Employees who worked overtime hours between July 1, 2007 and June 30, 2008, shall either be provided time off or be paid by June 30, 2008. Employees who worked overtime hours between July 1, 2008 and June 30, 2009, shall either be provided time off or be paid by June 20, 2009.

005 Exempt Employees.

005.01 Schedule Deviation. Exempt employees who, in fulfilling their job responsibilities (which may include travel time) extend their accountable work hours beyond the expected eight (8) hour work day or approved work schedule, may deviate from their usual working hours upon agreement between the employee and immediate supervisor as to when the schedule deviation will take place. Schedule deviation is defined as an adjustment of work hours or length of the work day.

005.02 Hours worked on a holiday by an exempt employee shall be compensated at straight time.

006 Non-Exempt Employees – Overtime Calculation.

006.01 Overtime shall include all compensable work time in excess of forty (40) hours either at time and one-half (1-1/2) or at straight time.

006.02 Holidays shall be considered as work hours for overtime purposes. Hours worked by an overtime eligible employee on a holiday shall be compensated at one and one-half (1.5) times their normal hourly rate of pay. All hours worked on a holiday in excess of the employee's normally scheduled work day shall be compensated at two (2) times the employee's normal hourly rate of pay.

006.03 Paid sick, vacation, or bereavement leave shall not be considered as work hours for overtime purposes.

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CHAPTER 9 -- LEAVE AND HOLIDAYS

001 The following provisions apply to paid and unpaid leave:

001.01 Unauthorized Leave. An absence by an employee which does not meet the requirements specified in this Chapter and is not authorized by the employee's supervisor shall be considered as unauthorized leave. Unauthorized leave may be grounds for disciplinary action under the provisions of Chapter 13 of this Title.

001.02 Authorized Leave. An absence by an employee which meets the requirements specified in this Chapter and that is authorized by the employee's supervisor shall be considered as authorized leave.

002 Service Date Adjustments. Employees returning to work on or after July 1, 2001, after a break in service of less than five (5) calendar years shall have their accumulated unpaid sick leave balance reinstated. The employee's service date shall be adjusted for the period of absence. The employee's vacation and sick leave earning rate will also be adjusted, and the new rate of earning will be based on the adjusted service date. Employees returning to work after a break in service of more than five (5) calendar years shall start with a zero (0) sick and vacation leave balance and shall be considered to be new employees for service date purposes, and shall earn vacation and sick leave at the beginning earning rate of a newly hired employee.

The employee's service date shall be adjusted when an unpaid absence exceeds fourteen (14) consecutive calendar days. The adjustment will correspond to the number of days the employee is on unpaid leave. See also Chapter 4 - Section 003 of this Title.

003 Holidays. The following holidays, and others when declared by law or proclaimed by the Governor or President of the United States as provided in Nebraska Neb. Rev. Stat. §84-1001(3) R.R.S., shall be compensated holidays for full-time and part-time employees and are scheduled on the dates indicated. When a holiday falls on Saturday, it shall be observed on the preceding Friday. When a holiday falls on Sunday, it shall be observed on the following Monday.

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Arbor Day	Last Friday in April
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Friday following Thanksgiving
Christmas Day	December 25

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CHAPTER 9 -- LEAVE AND HOLIDAYS

003.01 Full-Time Employees. Compensation for a holiday is based on an eight (8) hour work day for full-time employees.

003.02 Part-Time Employees. Part-time employees shall receive paid time off for holidays on a prorated basis according to the time they work each pay period.

003.03 Temporary and Contract Employees. Temporary and contract employees are not eligible for holiday leave, and if required to work on a holiday or observed holiday, are paid for the time worked at their normal rate of pay.

003.04 Employees must be in a paid-work status either the day preceding or following the holiday in order to receive pay for the holiday.

004 Vacation Leave. All employees, excluding temporary and contract employees, earn paid vacation leave. Earning of vacation leave begins immediately upon employment and it may be applied for as soon as it is earned, subject to the provisions of this Chapter. Hours are not considered earned until the end of the month. No vacation leave is earned by an employee on leave-without-pay status. Full-time employees earn vacation leave according to the following schedule:

1st year through 5th year	96 hours	12 days
6th year	120 hours	15 days
7th year	128 hours	16 days
8th year	136 hours	17 days
9th year	144 hours	18 days
10th year	152 hours	19 days
11th year	160 hours	20 days
12th year	168 hours	21 days
13th year	176 hours	22 days
14th year	184 hours	23 days
15th year	192 hours	24 days
16th year and more	200 hours	25 days

004.01 Vacation Leave for Part-Time Employees. Part-time employees shall earn paid time off for vacation on a prorated basis according to the time they work each pay period.

004.02 Using Vacation Leave. Vacation leave should be applied for in advance by the employee and may be used only when approved by the appropriate Leadership Council Member. Vacation leave may not be unreasonably denied or deferred so that the employee is deprived of vacation rights.

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004.03 Advancing Vacation Leave. The appropriate Leadership Council Member

may at his/her discretion advance vacation leave to employees with six (6) months of service with the Department in an amount not to exceed that which the employee would earn in the succeeding six (6) month period. For employees with more than five (5) continuous years service and with no record of leave abuse, request for vacation leave advancement of forty (40) hours or less will not unreasonably be denied. Employees shall reimburse the Department for all used unearned vacation leave upon termination either by a deduction in their final check or by separate agreement. Employees may not request more than one advancement each calendar year. Written notice of advancement must be provided to the Human Resources Office.

004.04 Balancing of Vacation Leave During Employment. Up to two hundred and eighty (280) hours of an employee's vacation leave may be carried over from one (1) calendar year to the next. Accumulated vacation time in excess of two hundred and eighty (280) hours shall be forfeited as of December 31st of each calendar year. In the event an unforeseen work-related emergency prevents an employee from taking planned vacation leave before December 31 and causes them to lose that vacation leave, additional carryover vacation leave may be approved by the Deputy Commissioner. In such cases, the hours above two hundred and eighty (280) that are carried over must be used within the next six (6) months.

004.05 Balancing of Vacation Leave Upon Separation. Employees who leave state government employment for any reason shall be paid for any unused accumulated vacation leave earned, calculated on their current base hourly rate. However, vacation leave, both as to earned unused hours and as to years of service for accumulation purposes, may be transferred when employees transfer between another Nebraska State agency, Nebraska State University or college and the Department without a break in service, upon mutual agreement of the employers.

004.05A A retiree returning to state service will begin earning vacation leave at the beginning rate of a newly hired employee. A retiree shall mean an employee who is qualified to receive retirement allowance under the state or the school retirement system.

004.06 Leave Without Pay. All earned accumulated vacation leave shall be used by an employee before granting leave without pay, except when a qualified employee is granted FMLA, which is leave without pay. Employees may request leave without pay in writing from the appropriate Leadership Council Member; however, granting leave without pay is discouraged and

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should not be done on a regular basis. Written notice of leave without pay must be provided to the Human Resources Office.

005 Sick Leave. All employees, excluding temporary and contract employees, as defined by

Chapter 4, earn paid sick leave. Accumulation of sick leave begins immediately upon employment and may be applied for as soon as it is earned, subject to the provisions of this Chapter. Hours are not considered to be earned until the end of the month. No sick leave is earned by an employee on leave-without-pay status.

Full-time employees accumulate sick leave according to the following schedule:

<u>Years of Service</u>	<u>Sick Leave Earned Per Year</u>	
1st year through 5th year	96 hours	12 days
6th year through 15th year	112 hours	14 days
16th and following years	144 hours	18 days

005.01 Sick Leave for Part-Time Employees. Part-time employees shall accumulate paid time off for sick leave on a prorated basis according to the time they work each pay period.

005.02 Conditions for Using Sick Leave. Sick leave may be used only under the following conditions:

005.02A When an employee is unable to perform his/her duties because of illness, disability, or injury, or when an employee's presence at work jeopardizes the health of others by exposing them to a contagious disease. Pregnancy complications, post-natal recovery, and miscarriage shall be considered valid reasons to use sick leave. Absence due to treatment for alcoholism or drug addiction, if medically diagnosed by a licensed physician, and if the employee is receiving assistance or has agreed to an approved course of treatment, shall be considered legitimate sickness.

005.02B When an employee undergoes medical, surgical, dental, or optical examinations or treatment or when the employee must seek emergency medical treatment.

005.02C When the illness, disability, injury, surgery, medical examination, procedure or treatment of an immediate family member requires the employee's presence. The seriousness of the illness, disability, injury or surgery should be considered when determining the number of days of sick leave to be granted. The immediate family shall mean: spouse; children including step, adopted and foster children; children-in-law; parents; and, parents of the spouse.

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At the discretion of the appropriate Leadership Council Member, sick leave benefits may be extended for the care of other individuals with a similar personal relationship to the employee as that of an immediate family member.

005.02D After the birth of a baby, the employee who is the father of the

baby may use up to five (5) days of sick leave. If more than five (5) days of sick leave is necessary and required, for medical reasons, to care for the new baby or the mother, a note from the medical provider may be required to establish the medical necessity.

005.02E After the birth of a baby, an employee, other than the father, may use sick leave if his or her presence is necessary and required, for medical reasons, to care for the new baby or the mother (if the mother meets the definition of immediate family). A note from the medical provider may be required to establish the medical necessity.

005.02F Under this section, employees may use sick leave to attend school appointments for an immediate family member with a disability.

005.03 Sick Leave Not to be Used as Vacation Leave. Sick leave shall not be used as vacation leave.

005.04 Requesting Sick Leave. Sick leave shall be requested in advance whenever possible. In the case of illness, injury, emergency, or any other absence not approved in advance, the employee shall advise Department personnel of the circumstances as soon as possible and shall submit a written request regarding such absence within one (1) day after returning to work. An employee may be required to submit substantiating evidence and/or documentation when the reason for the leave request was a medical or dental appointment or when the immediate supervisor suspects sick leave abuse. Substantiating evidence may also be required if the sick leave absence exceeds five (5) consecutive work days.

005.04A If an employee has been absent on sick leave for five (5) consecutive work days, the employee may be required to produce written verification from a medical provider to document fitness to return to work, including notice of any necessary work restrictions.

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005.04B Independent of an employee's use of sick leave and the five (5) consecutive work day requirement noted above, if an immediate supervisor has reason to believe that an employee's presence at work poses a significant health or safety risk, the employee may be required to produce medical verification regarding fitness for work.

005.05 Advancing Sick Leave. Sick leave may, at the discretion of the appropriate Leadership Council Member, be advanced to employees with six (6) months of

service with the Department who are ill, in an amount not to exceed that which the employee would earn in the following six (6) month period. Employees shall reimburse the Department for all used, unearned sick leave upon termination, either from a deduction in their final check or by separate payment. Employees may not request more than one advancement in a six (6) month period. Written notice of advancement must be provided to the Human Resources Office.

005.06 Balancing Sick Leave During Employment. There shall be no maximum limit on sick leave balances carried from year to year.

005.07 Balancing Sick Leave Upon Separation. Upon separation of employment all sick leave shall be forfeited. However, all accumulated unused sick leave may be transferred when the employee transfers between another Nebraska State agency, Nebraska State University or college and the Department without a break in service, by mutual agreement between employers. In the event of the death of an employee, the employee's beneficiary shall be paid one-fourth (1/4) of the accumulated unused sick leave computed at the rate of pay earned by the employee at the time of death and shall not exceed four hundred and eighty (480) hours. Upon separation of employment, if the employee is at least fifty-five (55) years of age, the employee shall be paid one-fourth (1/4) of the accumulated unused sick leave paid at the hourly rate in effect upon separation. An employee may only receive this payout once no matter how many times they are re-employed with the State of Nebraska. Payment for one-fourth (1/4) of the accumulated unused sick leave balance in the case of separation or death shall not exceed four hundred and eighty (480) hours.

005.07A Employees who are at least fifty-five (55) years of age, who are laid off, shall have the option to defer the payment of one-quarter (1/4) of their sick leave account for up to twelve (12) months. Should the laid off employee return to Department employment within twelve (12) months, the employee's sick leave balance and service date shall be reinstated (minus time in a non-pay status).

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Should the laid off employee not obtain further Department employment at the end of the twelve (12) month period, the Department shall pay the employee one-quarter (1/4) of their sick leave account, not to exceed four hundred and eighty (480) hours.

005.08 If an absence extends beyond the sick leave accrued to the credit of the employee, such employee may be required to utilize (1) accumulated unused compensatory time off and (2) accrued vacation leave, in that order. After all accrued sick leave, compensatory time off, and vacation leave have been exhausted, the employee, upon written request, may be granted leave without pay (outside FMLA in Section 006) at the discretion of the appropriate Leadership Council Member. However, granting such leave without pay is discouraged and should not be done on a regular basis. Written notice

regarding the leave without pay must be provided to the Human Resources Office.

006 Family and Medical Leave Act. Family and Medical Leave is unpaid time off from work and is subject to the provisions of 29 CFR 825. An employee must have at least twelve (12) total months of State service and at least 1250 hours of State service in the previous twelve (12) month period to be eligible for Family and Medical Leave. Employees are not required to use or exhaust their accumulated vacation or sick leave hours prior to accessing FMLA hours. Forms should be obtained from the Department's Human Resources Office.

006.01 Notice of Intent to Use Family and Medical Leave. An employee must provide a minimum of thirty (30) calendar days notice to the Department before he/she may use Family and Medical Leave. Where thirty (30) calendar days notice is not foreseeable, notice must be given as early as possible. If certification of a serious health condition is required, FMLA forms should be obtained from the Department's Human Resources Office.

006.02 Family and Medical Leave Duration. Total unpaid leave time taken for Family and Medical Leave is limited to twelve (12) weeks within a twelve (12) month period, starting with the date the employee first uses unpaid Family and Medical Leave. Employees may use accrued sick leave beyond the twelve (12) week Family and Medical Leave limitation for appropriate sick leave reasons as defined in Section 005.02 of this Chapter, with proper certification from a health care provider. Family and Medical Leave cannot be carried forward beyond the twelve (12) month period and banked for future use.

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With the approval of the Department, Family and Medical Leave may be taken in increments with proper medical certification. Federal law allows employees not eligible for overtime to make incremental use of unpaid Family and Medical Leave without affecting their "salaried" status.

006.03 Conditions for Using Family and Medical Leave. An employee may use Family and Medical Leave for the following reasons:

006.03A Birth of a child of the employee and care for that newborn child;

006.03B Placement of a child with the employee for adoption or foster care;

006.03C Care for the employee's spouse, child, or parent with a serious health condition.

006.03C1 Spouse means a husband or wife as defined or

recognized under state law for purposes of marriage in the state when the employee resides, including common law marriage in states where it is recognized. Child may include a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under eighteen (18) years of age or is eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability. Care for mother-in-law or father-in-law is not included. However, parent may include individuals other than natural or adoptive parents who served in a long-term parental role for the employee.

006.03D A serious health condition that makes the employee unable to perform the functions of the employee's job.

006.04 Definition of Serious Health Condition. Serious health condition shall mean illness, injury, impairment, or physical or mental conditions that involve:

006.04A In-patient care in a hospital, hospice, or residential medical care facility including any period of incapacity or any subsequent treatment in connection with such in-patient care; or,

006.04B Continuing treatment by a health care provider as provided for in 29 C.F.R. §825.114(a)(2).

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006.04C Examples of serious health conditions include: heart attack, heart by-pass or valve operations, most cancers, back conditions requiring extensive therapy or surgery, strokes, severe respiratory conditions, spinal conditions, severe arthritis, severe nervous disorders, mental illness, need for prenatal care, severe morning sickness, childbirth, and recovery from childbirth. This does not include voluntary or cosmetic treatments, unless inpatient hospitalization is required.

006.05 Certification of Serious Health Conditions. When requesting Family and Medical Leave for a serious health condition, an employee must provide certification from a health care provider, which includes:

006.05A The date on which the serious health condition commenced;

006.05B The probable duration of the condition;

006.05C The appropriate medical facts with the knowledge of the health care provider regarding the condition;

006.05D A statement that the employee is needed to care for the child, spouse, or parent, and an estimate of the amount of time that such employee is needed to care for the child, spouse, or parent; or, a statement that the employee is unable to perform the functions of the job; and,

006.05E In the case of certification for intermittent leave, or leave on a reduced leave schedule, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; or, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the child, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule. In the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment should be included.

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006.06 The Department may require a second opinion (the Department's choice of health care provider) and must pay for the cost of the second opinion. If the second opinion differs from the first, a third opinion may be sought (from a mutually agreed upon health care provider, again, at the Department's expense). The results of the third opinion are final.

006.06A In the event the employee is requesting leave due to more than one serious health condition, the certification must specifically address each individual condition. Separate forms shall be submitted as appropriate. Regardless of whether a single or multiple health condition(s) is/are involved, the limit in Section 006 of this Chapter, applies.

006.07 Health Insurance While on Family and Medical Leave. Employer health insurance contributions shall continue during an employee's unpaid Family and Medical Leave absence, provided the employee makes his/her required contribution. Employer contributions shall be based as if the employee had continued to work his/her normal schedule.

006.08 Worker's Compensation and Family and Medical Leave. If an employee requests Family and Medical Leave due to an injury or illness qualifying for Worker's Compensation, the Department will contact the Division of

Administrative Services - Risk Management, for coordination of Worker's Compensation and Family and Medical Leave benefits.

006.09 Use of Paid Leave Hours. While using unpaid FMLA leave, employees may apply accumulated paid leave time to their monthly timesheet, in no less than eight (8) hour increments, in order to prevent a service date adjustment, to qualify for paid holiday leave, or for other reasons.

007 Bereavement Leave. Up to forty (40) hours paid bereavement leave may be granted to employees for a death in the immediate family. For a death not in the immediate family, up to eight (8) hours, with pay, may be granted. For purposes of this Section, immediate family shall mean spouse, parents, grandparents, siblings, children including foster children, grandchildren, spouse of any of these, or someone who bears a similar relationship to the spouse of the employee. Step-persons bearing these relationships are included. At the discretion of the appropriate Leadership Council Member, bereavement leave benefits may be extended for other individuals with a similar personal relationship to the employee as that of an immediate family member.

007.01 No employee shall be unreasonably denied the granting or advancement of up to an additional eighty (80) hours of vacation leave when such additional time is available and necessary to settle personal matters related to a death

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in the immediate family. The granting of leave under this Chapter shall not prohibit or interfere with the granting of leave under any other Chapter or provision of this Title.

008 Administrative Leave. Administrative leave, with pay, may be granted due to natural disasters, public health emergencies, inclement weather or other local work-related emergencies. Administrative leave due to natural disasters or public health emergencies may only be authorized by the direction of the Commissioner or Deputy Commissioner. Administrative leave with pay due to inclement weather or other local work-related emergencies shall be granted in the following manner:

008.01 Lincoln area: (Nebraska State Office Building and other Lincoln offices) by direction of the Deputy Commissioner;

008.02 Outstate: A decision to close outlying offices or facilities due to inclement weather or work-related emergencies shall be made by the administrators at the site. Information on closings shall be forwarded to the Deputy Commissioner and the Department's Human Resources Office;

008.03 If state offices remain open during inclement weather or other work-related emergencies, employees are expected to make a reasonable effort to report for work. Employees who fail to report for work shall be charged vacation leave or leave without pay. The appropriate Leadership Council Member, or the immediate supervisor, if authorized by the appropriate Leadership Council Member, may grant permission to employees to make up missed hours during

the same week rather than requiring them to use vacation leave or leave without pay; or,

008.04 Employees who report for and remain at work in periods during which administrative leave was authorized shall be granted compensatory time off at a later date.

009 Military Leave. Employees shall be eligible for Military Leave in accordance with applicable federal and state laws. This leave is limited to one hundred and twenty (120) hours a year, with no accumulation of unused leave carried over to the following calendar year. Such military leave may be taken in hourly increments.

010 Civil Leave. All employees (including temporary) shall be eligible for paid civil leave under the following conditions:

010.01 Jury Duty. If an employee is called to serve as a juror, the employee shall be entitled to paid civil leave in addition to jury duty pay. Employees will return to work when the employee's physical presence is not required by the court.

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010.02 Election Board Duty. If an employee is appointed as a clerk, election inspector, or judge on an election or counting board, the employee shall be granted civil leave during the time when the employee's physical presence is required by the court or the board. The employees shall also retain all fees paid them for their civil service.

010.03 Voting Time. All employees shall be given up to two (2) hours for the purpose of voting provided the employee does not have sufficient time before or after regular duty hours to cast a ballot due to work responsibilities. The two (2) hours authorized for voting does not apply to those employees, who choose to or by reasons of their employment, must vote by use of an absentee ballot. Civil leave does not include leave for military duty in connection with national defense, national disaster or civil disturbances.

010.04 Court Appearances. While serving as a witness under a work-related subpoena, the employee shall be excused from work with pay during the time that the employee's presence is required by the court or administrative body which issued the subpoena. At all other times during the employee's regular work day, the employee who is subject to a work-related subpoena shall be on the job and working. Any witness fee received under such subpoena shall be remitted to the funding source from which the employee's salary is paid.

Employees attending court as a plaintiff, defendant, or witness on non-work related matters, shall use vacation leave or earned compensatory time, if available. If the employee does not have vacation leave or compensatory time available, the appropriate Leadership Council Member shall grant leave without pay. Any witness fees paid to the employee for these court appearances shall be kept by the employee.

011 Miscellaneous Leave. Employees shall be eligible for the following types of leave:

011.01 Interviews. Interviews with employees for positions within the Department shall be performed during work hours. Time spent for interviews, and travel to attend such interviews which occur during the employee's regular work day shall be compensable.

011.02 Leave of Absence. Employees with at least three (3) years of service are eligible for a leave of absence without pay. A leave of absence of three (3) months or less for professional advancement, special training, or other good and sufficient reasons may be granted by the Commissioner. A leave of absence of more than three (3) months is subject to approval by the State Board of Education, which will review the request and the recommendation of the Commissioner of Education. Such leave of absence shall be requested

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in writing to the Commissioner through the appropriate member of the Leadership Council. Said leaves of absence may be with or without pay at the determination of the Department.

011.02A At the expiration of an approved leave of absence, employees shall return to a position of a similar classification or paygrade as the position the employee held prior to leave, if available. If no such position is available, the employees shall be considered "laid off" under the provisions of Chapter 12 of this Title. Failure on the part of an employee to report promptly at the expiration of the leave of absence, except for satisfactory reasons submitted to and approved by the Commissioner, may be cause for dismissal.

011.02B Vacation and sick leave shall not accrue while on leave of absence without pay. However, vacation and sick leave earned but not used prior to leave of absence shall be carried forward upon employee's return to duty.

011.03 Leave to Donate Blood. With the advance approval of their immediate supervisor, employees may be allowed paid time away from the job to donate blood in state-sponsored drives held in state offices, or to donate blood at the request of blood banks or centers facing a blood supply emergency. The amount of leave time granted shall be at the discretion of the immediate supervisor.

Donating blood under circumstances unrelated to state-sponsored drives or supply emergencies shall require employees to obtain advance approval to use vacation leave or to adjust their work hours to complete a full work day.

011.04 Employee Assistance Program. Employees attending Employee Assistance Program (EAP) sessions at the Department's direction shall do so at the

Department's expense and may attend during work time. If an employee wishes to voluntarily attend EAP sessions in order to address personal issues that are affecting work performance, supervisors may authorize the employee to do so during work time. Employees attending EAP sessions on their own initiative shall do so at their own expense and shall use approved sick or vacation leave or leave without pay.

011.05 Retirement Seminars. Leave with pay shall be provided to eligible employees to attend up to two (2) planning seminars and two (2) pre-retirement planning programs presented by the Nebraska Public Employees Retirement Systems.

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011.06 Injury Leave. Employees who are subject to the provisions of the Worker's Compensation Act are entitled to the benefits of that law due to injury or occupational disease arising out of and in the course of their employment. Employees shall report all injuries occurring in the course of employment to the Human Resources Office. Forms for that purpose are available from the Human Resources Office. See Chapter 15 of this Title for additional information on Workers' Compensation.

011.07 Disaster Relief Leave. Employees who provide proof of their disaster relief volunteer certification with the American Red Cross may, with appropriate supervisory authorization, be granted paid civil leave not to exceed fifteen (15) work days in each calendar year to participate in specialized disaster relief services in Nebraska for the American Red Cross, upon the request of the American Red Cross.

011.08 Adoption Leave. Upon request, the mother of newly adopted children shall receive the same leave allowances as employees who are new mothers by natural birth (generally six [6] weeks of sick leave and then available vacation leave hours) when adopting a child. Fathers of newly adopted children shall receive leave on the same terms as fathers by natural birth.

Employees are not eligible for adoption leave if the child being adopted is a special needs child over eighteen (18) years of age, a child who is over eight (8) years of age and is not a special needs child, a stepchild being adopted by his or her stepparent, a foster child being adopted by his or her foster parent, or a child who was originally under a voluntary placement for purposes other than adoption without assistance from an attorney, physician, or other individual or agency which later results in a petition for the adoption of the child by the person with whom the voluntary placement was made.

011.09 Attendance at Legislative Hearings. Employees may be allowed to utilize compensatory time off (or modified work schedule for those employees who do not earn compensatory time) for the purpose of attending legislative hearings and upon notification to the employee's supervisor of the purpose of such

request for time off, said request may not be unreasonably denied. Such employee's supervisor shall be given as much prior notice as possible under the circumstances as to when such leave is proposed.

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012 Catastrophic Illness Donation. The provisions of this section are non-grievable. Employees may contribute accrued vacation leave to benefit another employee in the Department who is personally experiencing a catastrophic illness. The recipient must initiate a request by completing and signing a donation request form provided by the Department. Leave shall be donated in no less than four (4) hour increments. The contributing employee must complete and sign a donation authorization form provided by the Department and identify the number of hours of vacation leave being donated and the recipient. Vacation leave donated to another employee pursuant to this provision shall be irrevocably credited to the recipient's sick leave account.

012.01 Recipient Eligibility. In order to receive a leave donation employees must:

012.01A Be experiencing a serious illness or injury resulting in a prolonged absence of at least thirty (30) consecutive calendar days during the past six (6) months;

012.01B Produce satisfactory medical verification;

012.01C Have one (1) year of state service;

012.01D Have exhausted all earned paid leave time including compensatory time off, sick leave, and vacation leave through bona fide serious illness or accident; and,

012.01E Not have offered anything of value in exchange for the donation.

012.02 Donor Eligibility. In order to make a leave donation employees must:

012.02A Not have solicited nor accepted anything of value in exchange for the donation; or,

012.02B Have remaining to his/her credit at least forty (40) hours of accrued vacation leave after the donation has been made.

012.03 Donation Value Conversion. Leave donated will be converted to a dollar value and then converted to hours based on the recipient's hourly rate. No more than 800 converted hours of donated leave may be received by an

employee during a twelve (12) month period.

012.04 Donation Period. Donations cannot be retroactively applied to the thirty (30) consecutive calendar day qualifying period mentioned in Section 012.01A.

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CHAPTER 10 -- PERFORMANCE APPRAISALS

- 001 Conducting Appraisals. Employees shall be appraised on their job performance at regular intervals as determined appropriate by Department supervisors. Performance appraisals shall be completed on forms developed and/or approved by the Deputy Commissioner.
- 002 Special Performance Appraisal. A special performance appraisal may be submitted whenever the supervisor desires to record instances of performance worthy of recognition, either favorable or unfavorable. Reasons for submission of a special performance appraisal shall be explained in the comments section of the appraisal.
- 003 Signing the Appraisal. The signatures on the appraisal indicate that the appraisal has been discussed. The employee's signature does not imply agreement with the appraisal. Within seven (7) calendar days of receipt of the appraisal, employees may submit a written statement that shall be attached to the appraisal and become a permanent part thereof. No additional written observation shall be made on the appraisal after the employee has signed the appraisal without notification to the employee. Employees shall be provided with a copy of the completed performance appraisal immediately after the Reviewer's signing of the appraisal.
- 004 Grievance. Employees shall not grieve the subjective content of a performance appraisal under the provisions of Chapter 14 of this Title. They may, however, grieve the validity of the appraisal as provided below:
- 004.01 A grievance may be filed if the evaluated employee can establish discrimination by reason of sex, race, color, age, national origin, marital status, religion, or disability; the evaluator maliciously misrepresented an employee's manner of performance; the evaluator provided false information on the appraisal instrument; or, the evaluator was not in a direct supervisory or management position covering the daily work of the employee being evaluated.

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CHAPTER 11 -- PERSONNEL FILE INFORMATION

- 001 Content. Personnel records shall include all information stored in any form by the Human Resources Office of the Department which is personally identifiable with an individual employee or former employee. The Department agrees to maintain one official Department personnel file per individual for the provisions of this Chapter. The one official Department personnel file will be maintained at the State Office Building in the Department's Human Resources Office. An employee of the Department shall be allowed to inspect and/or obtain a copy of their own personnel file at any time during working hours. It is understood that such original files cannot be removed from the premises. Upon the specific request to the Human Resources Office by an employee the Department will, within ten (10) work days, provide either the specific documents requested or copies thereof or the original personnel file or a copy thereof for the employee's review at the worksite.
- 002 Public Information. Public information contained in personnel records shall consist only of the full name of the employee; the employee's job title and date(s) of employment; a statement as to whether the individual is or was an employee of the Department; the employee's work location and work phone number; and, the gross salary of the employee. Public personnel information shall be provided to any party requesting it.
- 003 Confidential Information. Confidential information contained in personnel records shall include all information which is not considered public information. Confidential information shall be released only to the employee; the Board; any Department administrator or supervisor in the line of authority to the employee; staff from the Human Resources Office or the General Counsel's Office; any governmental investigative agency upon presentation of proper identification to the Human Resources Office; a subpoena; or, anyone who presents a notarized document signed by the employee granting access to confidential information.
- 004 Release of Information. All third party inquiries requesting information on the employment record of an employee shall be directed to the Human Resources Office. The Human Resources Office shall forward an Authorization for Release of Employment Records Form to the requestor who shall be responsible for securing a written authorization from the former employee and returning the form to the Human Resources Office. Upon receipt of a written authorization, the Human Resources Office shall provide the information to the requestor. If no written authorization is received, the Human Resources Office shall release only public information. The written authorization shall be retained in the employee's personnel file.
- 005 Medical Records. Employee records of medical examination and other miscellaneous medical records will be maintained in the Human Resources Office in a separate locked filing cabinet. Appropriate steps will be taken to safeguard the confidentiality of medical records to assure their access only to personnel who require them to carry out an assigned responsibility.

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CHAPTER 11 -- PERSONNEL FILE INFORMATION

006 Home Address. All employees are required to provide a current physical home address to the Human Resources Office.

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CHAPTER 12 -- RESIGNATION AND LAYOFFS

- 001 Effective. Resignations are effective when accepted in writing or orally by a supervisor or any member of the Human Resources Office or the Department's General Counsel's Office.
- 002 Payment for Vacation Leave. Vacation leave not used prior to the last day of employment shall be paid to the employee in one lump sum, to be mailed to the employee after termination except as provided for in Chapter 9, Section 004.05.
- 003 Determining Authority. The Commissioner, with approval of the Board, may separate any employee without prejudice after thirty (30) calendar days written notice, because of reduction in funds or in work load. It shall be left to the discretion of the Commissioner to determine whether the layoff shall be geographical; organizational; program; by classification; or, any combination thereof.
- 004 Layoff General Rules. When a layoff of employees occurs, the following general rules shall apply:
- 004.01 Layoffs shall be identified by the budget and program areas within a specific locality. The Department shall identify the classification(s) and affected positions within classification(s) for layoff to provide the most efficient continual operation of the Department. Within the identified classification(s), the order of layoff will be based on seniority (based on the employee's adjusted service date with the Department.)
- 005 Transfer Rights. Employees who have received written notice of layoff shall have the right to exercise transfer rights under this section. If there is a vacant position in the Department, for which the employee satisfies the qualification requirements as determined by the Department, the employee may elect to transfer to such vacant position.
- 005.01 Within eight (8) calendar days of a laid off employee being provided such information, the employee must notify the Department in writing of any intentions to transfer in accordance with this section.
- 005.02 If more than one laid off employee elects to transfer into a vacant position, the selection will be made based on seniority.
- 005.03 In determining the priority of transfers identified in this section, transfers to vacant positions in the same geographic area (i.e., within sixty [60] miles) shall be given priority over transfers to positions in a different geographic area.
- 005.04 An employee who transfers to another position in the same classification shall be transferred so as to effectuate no loss in pay.

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CHAPTER 12 -- RESIGNATION AND LAYOFFS

006 Recall and Re-employment. This section specifies how laid off employees shall be either recalled or given re-employment opportunities for vacancies created following a layoff.

006.01 Recall to Previously Eliminated Position. Following a layoff, when a position previously eliminated is restored, the employee occupying the position at the time of reduction in force shall have recall priority subject to Sections 006.02A through 006.02C of this Chapter.

006.02 Recall to Vacancy in the Same Classification Series. Following a layoff, when a vacancy is created in the same classification series, employees who satisfy the required qualifications as determined by the Department shall be recalled in reverse order of a layoff or transfer in lieu of layoff as provided as follows:

006.02A At the time the vacancy occurs, the Department shall notify the first five (5) qualified employees in line for recall of the vacancy.

006.02B Such employee(s) shall then have ten (10) work days following date of notification to accept or refuse the recall by providing written notice to the Department. The recall vacancy will be offered to the employee with the most seniority who provides written acceptance within ten (10) work days.

006.02C Employees who fail to respond by either accepting or refusing the recall vacancy on two (2) successive notifications shall forfeit further recall rights.

006.03 Re-employment Opportunities. In the event that a vacancy occurs as provided in Section 006.02 of this Chapter and there are no persons laid off or transferred in lieu of layoff who held a position in the classification series at the time layoff began, the Department shall notify all laid off employees of the vacancy and the qualifications required to hold the position. Such employees shall then have ten (10) calendar days following receipt of such notice to apply for said position. The Department has the right to hire the most qualified applicant.

006.04 The pay rate of an employee who occupies a position of a lower classification as a result of recall from layoff or re-employment shall be set in accordance with Chapter 6, Section 004.

006.05 In cases in which employees have received state financial assistance in geographically relocating to avoid layoff, there shall be no requirement for such assistance if recalled to their previous position.

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CHAPTER 12 -- RESIGNATION AND LAYOFFS

007 During the twelve (12) month period following layoff or transfer in lieu of layoff of the employee, no new employees will be hired to fill vacant positions until all employees on layoff or transfer in lieu of layoff who desire to return to work and who are qualified for the vacant position(s) have had the opportunity to be recalled or re-employed per Section

006 of this Chapter. It shall be the responsibility of the employee who was laid off or transferred in lieu of layoff to be available for recall or re-employment during such time, and such employee shall be responsible for providing the Department with a current address. It shall be the responsibility of the employee who was laid off or transferred in lieu of layoff to update and/or supplement the written documentation in their personnel file regarding their employment qualifications so as to allow the Department to evaluate their eligibility for recall or re-employment under Section 006 of this Chapter.

007.01 During the twelve (12) month period, employees may waive their rights to receive recall and re-employment notice rights contained in this Chapter by providing a written statement to the Human Resources Office.

008 Employees who are laid off shall be paid at the time of layoff for all accumulated and unused vacation leave, compensatory time off, and overtime. Statutory provisions for the retention of vacation and sick leave shall not be modified by this Chapter.

009 "Notification," as used in this Chapter shall mean Certified Mail to the employee's last known address, or personal delivery, or deposit at last known residence.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 13 -- CORRECTIVE AND DISCIPLINARY ACTIONS

001 Grounds. Grounds for corrective, disciplinary action, and/or dismissal include, but are not limited to:

001.01 Violation of, or failure to comply with, State Constitution or statute; an executive order; published rules and regulations of the Department; or, Department policies or administrative memoranda.

001.02 Failure or refusal to comply with a lawful order or to accept a reasonable or proper assignment from an authorized supervisor.

001.03 Inefficiency, incompetency, or negligence in the performance of duties.

001.04 Careless, negligent, improper, or unsafe use of state property; equipment or funds; or, conversion of same to one's own personal use.

001.05 Use of undue influence to gain, or attempt to gain, promotion, leave, favorable assignment, or other individual benefit or advantage.

001.06 Falsification, fraud, or willful omission of information when applying for a position, performing the duties of a position or completing records or reports relevant for the Department.

001.07 Unauthorized or improper use of any type of leave, repeated tardiness, repeated failure to comply with scheduled work hours, or absence without leave.

001.08 Failure to maintain satisfactory working relationships with the public, other employees, or persons placed under the direct care and responsibility of the employee.

001.09 Failure to obtain and maintain a current license or certificate required by law or Department standards as a condition of employment.

001.10 Violation of any provision of the Department's Code of Ethics under the provisions of Chapter 16 of this Title.

001.11 Conduct which brings discredit to the Department, the State, or which impairs an employee's services.

001.12 Unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance or alcoholic beverage in the workplace or reporting for duty under the influence of alcohol and/or unlawful drugs.

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CHAPTER 13 -- CORRECTIVE AND DISCIPLINARY ACTIONS

- 001.13 Insubordinate acts of language which seriously hamper the Department's ability to control, manage, or function.
- 001.14 Acts or conduct (on or off the job) which adversely affects the employee's performance and/or the successful completion of the Department's performance or function.
- 001.15 Unlawful work place discrimination (harassment) based in whole or in part, on race, color, sex, sexual orientation, religion, age, disability, or national origin, which manifests itself in the form of comments, jokes, printed material, and/or unwelcomed sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.
- 001.16 Display of obscene materials and/or the utterance of comments in the workplace that are derogatory toward a group or individual based upon race, sex, sexual orientation, color, religion, disability, age, or national origin.
- 001.17 Possession of any type of firearm during the course of performing their job. The prohibition includes transporting firearms into any work site or in a state vehicle.
- 002 Investigatory Suspension With Pay. A suspension with pay is an ordered absence from duty while on full pay status for a prescribed period of time. A suspension with pay may be ordered only upon approval of the Deputy Commissioner. This action allows for: an immediate response to a suspected but not fully substantiated offense; a period in which an investigation can be thoroughly pursued as expediently as possible; or, for other reasons at the discretion of the Deputy Commissioner. Investigatory suspensions are not grievable.
- 002.01A The ordered suspension with pay shall be in writing, signed by the Deputy Commissioner, and shall become part of the employee's official personnel file. If the employee is absent when a suspension with pay is ordered, the Deputy Commissioner shall direct written notice to the employee by Certified Mail with instructions to "Deliver to Addressee Only, Return Receipt Requested" or by personal delivery, or deposit to the employee's last known address.
- 002.01B If a suspension with pay is ordered to allow for an investigation of a suspected offense, and if the offense is not substantiated, then the ordered suspension shall be removed from the employee's personnel file.
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- 002.01C In the absence of the Deputy Commissioner, the appropriate Leadership Council Member may order an employee's suspension with pay for up to ten

(10) calendar days. Upon the Deputy Commissioner's return, the Deputy Commissioner will affirm or modify the suspension with pay within five (5) calendar days.

003 Corrective Action.

003.01 Oral Counseling. This is an informal level of corrective action. It is a warning given by an immediate supervisor in conference with an employee in which the matter that caused the corrective action to be taken is discussed and the employee is advised what action is expected of him/her to correct the problem. A written record of the oral counseling may be prepared if a copy is provided to the employee; however, no record of it shall be placed in the employee's personnel file.

003.02 Written Warning. When, in the opinion of the supervisor, oral counseling is not an adequate measure to correct the deficiency, a written warning, which shall be considered a corrective action, may be imposed. The written warning must be fully documented in writing and must include an oral conference between the supervisor and the employee. The written narrative shall be consistent with the oral conference. The written warning shall be dated, shall explain the reason for the warning, and shall explain the action expected of the employee to correct the cause or problem. Both the supervisor and the employee shall sign the written warning, and the employee shall be given a copy of the completed and signed warning. The employee's signature thereon does not imply agreement with the contents of the written warning, but only that he/she has seen it and understands it. The written warning shall be considered effective on the date that it is issued to and received by the employee.

003.02A Written warnings shall be issued on official forms the Department may designate for this purpose.

003.02B The employee has the opportunity to attach written rebuttal, clarification, or objection to the written warning within five (5) work days of receipt by the employee.

003.02C The written warning shall become inactive ninety (90) calendar days after having been issued to the employee unless the originating supervisor shall renew it by additional written commentary on the original form explaining the renewal.

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003.02C1 When the written warning is renewed, the employee shall again have the opportunity to offer written commentary in response to the renewal and shall be provided with a copy of the annotated (renewed) form.

003.02C2 A written warning may be renewed no more than one (1) time.

004 Forms of Discipline. Four (4) forms of disciplinary action are available for supervisory use by the Department. The seriousness and/or nature of the situation will determine the form of discipline to be used. These are:

004.01 Suspension Without Pay. A suspension without pay is an ordered suspension from duty for a prescribed period of time for which no pay, vacation, sick, or holiday leave is granted, nor is vacation, sick, or holiday leave accrued. A suspension without pay may be ordered only upon written approval of the Deputy Commissioner.

004.01A The length of the suspension shall be determined by the Deputy Commissioner in view of the seriousness of the violation and/or continued violation after the employee has been duly warned.

004.01B An ordered suspension without pay shall be in writing and signed by the Deputy Commissioner, and shall become part of the employee's official personnel file. If the employee is absent when a suspension without pay is ordered, the Deputy Commissioner shall direct written notice to that employee by Certified Mail with instructions to "Deliver to Addressee Only, Return Receipt Requested" or personal delivery, or deposit to the employee's last known address.

004.02 Disciplinary Demotion. A disciplinary demotion is the movement of an employee from the present position to one of lesser responsibility and/or authority and to a lower paygrade, pursuant to the written approval of the Deputy Commissioner.

004.02A A request for disciplinary demotion shall be in writing with full documentation, signed by the supervisor, and the appropriate Leadership Council Member. An ordered disciplinary demotion shall be in writing and signed by the Deputy Commissioner and shall become a part of the employee's official personnel file.

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004.03 Administrative Probation. An administrative probation is a period of time, not more than six (6) calendar months, imposed by the appropriate Leadership Council Member, for disciplinary reasons during which the employee must rectify the performance or behavior which led to the imposition of the disciplinary action. The notice of administrative probation shall be in writing, dated, and shall inform the employee of the reason for the probation, the action required for improvement, and that failure to improve may result in further action. The employee shall acknowledge receipt of the

probation notice by signing the document. The employee's signature on the notice of administrative probation does not imply agreement with the notice of administrative probation.

004.03A Employees placed in an administrative probationary status shall not be promoted or granted pay increases during the probationary period.

004.03B Employees granted vacation, sick, holiday, bereavement, civil, administrative, or military leave while on administrative probation may have their probation extended by the number of days absent on leave.

004.03C The administrative probation may be extended by the Deputy Commissioner for a period not to exceed a cumulative total of one (1) calendar year. Reasons for such extension shall be made known to the employee.

004.03D The termination of a permanent employee on administrative probation does not preclude the filing of a grievance by the employee.

004.03E An employee may be placed on administrative probation, upon return to work, following suspension.

004.03F An employee may be removed from administrative probation at any time.

004.04 Dismissal. Dismissal is removal from employment with the Department for failure to respond to previous disciplinary actions or when extreme circumstances render any preceding steps unnecessary or inappropriate.

004.04A Dismissal from employment may be recommended in writing by the Commissioner to the Board.

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004.04B Prior to the Board making a final decision, the Commissioner may elect to take whatever action he/she chooses which affects the employee.

004.04C The Commissioner shall inform the employee, in writing, of a time at which the employee may present any additional facts, material, or evidence regarding the employee's dismissal to the Commissioner. Failure by the employee to appear before the Commissioner shall act as a waiver by the employee to the aforementioned meeting prior to action by the Board.

004.04D The employee may be represented by a third party in the meeting with the Commissioner, but the time, date, and/or place of said meeting shall not be postponed or rescheduled because the representative of the employee is unable to attend unless both the Commissioner and the employee mutually agree to another time, date, and/or place.

004.04E Within three (3) work days following the scheduled date of the meeting with the Commissioner, the Commissioner shall provide the employee a copy of his recommendations and the action that the Commissioner has decided to impose. The three (3) work day period may be extended upon agreement between the Commissioner and the employee. A copy of the Commissioner's dismissal recommendation shall be forwarded to the employee by Certified Mail with instructions to "Deliver to Addressee Only, Return Receipt Requested" or by personal delivery, or deposit to the employee's last known address. A copy of the Commissioner's dismissal recommendation shall be forwarded to the Board. This letter shall state the decision and the reasons for dismissal. The letter shall also contain the following facts:

004.04E1 The employee may obtain a hearing before the Board or, at the Board's option, its designated hearing officer by delivering a written request to the Commissioner within ten (10) work days of receipt of the Commissioner's letter of notice; and,

004.04E2 The date, time, and place of the hearing will be communicated in writing to the employee.

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CHAPTER 13 -- CORRECTIVE AND DISCIPLINARY ACTIONS

004.04E3 When a hearing is held, the employee may be present and be heard, be represented by counsel, examine documentary evidence presented, cross-examine witnesses, offer documentary evidence, and present witnesses. Hearings shall be conducted in accordance with Title 92, Nebraska Administrative Code, Chapter 61.

004.04E3a The Hearing Officer's findings of fact and recommendation to the State Board and the State Board's order in a contested case shall be considered public records.

004.04F If no timely written request of a hearing is received by the

Commissioner, the recommendation for dismissal shall be placed on the agenda for a State Board of Education meeting within the next ninety (90) calendar days.

004.04G When the Department determines that immediate disciplinary action is required for an employee not officed in Lincoln, the Commissioner or Deputy Commissioner may designate an individual to sign and deliver the notice of disciplinary action to the employee for the Commissioner or Deputy Commissioner. The disciplinary action will be effective immediately upon the receipt of such notice by the employee. The Commissioner or Deputy Commissioner will subsequently sign and forward a copy of such notice to the disciplined employee.

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CHAPTER 14 -- GRIEVANCE PROCEDURE

001 Eligibility. All employees occupying a permanent position have grievance rights. Applicants, temporary employees, contract employees, and employees on original probation have no grievance rights within this Chapter. An employee who has successfully completed an original probation period shall retain grievance rights during subsequent probation periods per Chapter 5, Section 004 of this Title.

002 Definition. A grievance is defined as a contention of misapplication or violation of any of the following: Department policies, rules or regulations including these Personnel Rules, written administrative policies, other written operating procedures or laws or written instructions pertaining to employees.

002.01 Effective Dates of Management Actions. Filing of a grievance does not delay the effective date of any management action. Initiation of a grievance related to suspension without pay or demotion shall not stay the effective date. In the event that a suspension without pay or demotion is not supported through the grievance procedures, the employee shall be returned to his or her position as though said suspension without pay or demotion had not taken place.

003 Non-Grievable Matters. The following issues, when done in compliance with established law, rule or Department policy, are examples of non-grievable matters. The list below is not to be considered all-inclusive:

- 003.01 Performance appraisals;
- 003.02 Department appointments, including promotions to positions;
- 003.03 Involuntary transfers not requiring the employee to relocate;
- 003.04 Leave of absence decisions;
- 003.05 Payment of moving expenditures;
- 003.06 Merit increase allocations;
- 003.07 Position classification, including, but not limited to, reclassification per Chapter 6 of this Title;
- 003.08 Investigatory suspensions with pay;
- 003.09 Pay adjustments pursuant to Chapter 7; and
- 003.10 FLSA status determinations.

004 An employee may only grieve layoffs (and/or transfer, recall and re-employment rights) only on the grounds of unlawful discrimination or failure to follow the provisions of the Personnel Rules in regard to the layoff.

005 Disciplinary Dismissals. Employees may contest disciplinary dismissals according to the provisions in Chapter 13, Section 004.04.

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CHAPTER 14 -- GRIEVANCE PROCEDURE

006 Grievance Procedure. The Grievance Procedure shall be as follows:

006.01 Step One. Within fifteen (15) work days of the employee's knowledge of the event or condition which caused the grievance, the grievant shall first request a meeting with the immediate supervisor and the next level of supervision. At the time the request is made, the employee shall notify the supervisor(s) that the meeting will constitute Step One in the grievance procedure. Within five (5) work days, the immediate supervisor, next level supervisor, and grievant shall meet. The supervisors shall arrive at an answer and communicate the same to the grievant within four (4) work days of the meeting. If the answer is not satisfactory to the grievant, Step One of the grievance shall be reduced to writing on the approved forms within three (3) additional work days and the supervisors shall have five (5) work days upon receipt of the written grievance to respond. The grievant shall specifically identify the rules, procedures, or policies, as defined in subsection 002 of this Chapter, that are contended to be misapplied.

006.01A The employee may be accompanied at any step of the grievance procedure by a representative of the employee's selection.

006.01B In cases of disciplinary demotion or disciplinary suspension without pay the grievant may immediately proceed as specified in Step Four of this procedure.

006.01C In cases of administrative probation, the grievant may immediately submit the grievance to the Deputy Commissioner in writing on the appropriate form within ten (10) work days of the date of notice. The Deputy Commissioner shall give a written answer within ten (10) work days of receipt of the grievance. If a resolution to the grievance is not reached, the employee may proceed as specified in Step Four of this procedure.

006.02 Step Two. When the response in the preceding step is not satisfactory to the grievant, the grievant may, within five (5) work days of the receipt of the supervisor's written response, present the grievance to the appropriate Leadership Council Member who shall give a written answer to the grievant within five (5) work days thereafter. If the next level of supervision above the grievant's supervisor is the Deputy Commissioner, Step Two should be deleted.

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CHAPTER 14 -- GRIEVANCE PROCEDURE

006.03 Step Three. When the response in the preceding step is not satisfactory to

the grievant, the grievant may, within five (5) work days of receiving the response from the appropriate Leadership Council Member, present the grievance to the Deputy Commissioner, who shall give a written answer to the grievant within five (5) work days, thereafter.

006.04 Step Four. If a resolution to the grievance is not reached, the grievant may, within fifteen (15) work days after receipt of the Deputy Commissioner's decision, appeal the grievance to the State Board of Education. The appeal at this level shall be directed to the Commissioner as Secretary of the State Board of Education.

006.04A After receiving the appeal, the Commissioner shall place the matter for hearing on the agenda of a meeting of the State Board of Education within the next ninety (90) calendar days.

006.04B The State Board of Education may elect to conduct the hearing or may designate that a hearing officer, not an employee of the Department, conduct a hearing and recommend a decision to the Board. The employee shall be notified of the Board's determination on the conduct of the hearing and the time and place of the hearing. In cases in which the Board elects to have a hearing officer conduct the hearing, the hearing officer shall cause a complete record to be made of all evidence offered at the time of the hearing. The hearing officer shall prepare written findings of fact and recommend a decision to the Board. The hearing officer shall deliver these findings of fact and recommendation to the State Board of Education together with a complete transcript of all evidence offered at the time of the hearing. Hearings will be conducted in accordance with Title 92, Nebraska Administrative Code, Chapter 61.

006.04C Both parties in a hearing pursuant to Step Four may present witnesses, and these witnesses shall be subject to cross examination. If the witness is an employee of the Department, he/she shall be paid for those hours outside his/her normal hours of work.

006.04D The Board may affirm, modify, or reverse the decision of the Deputy Commissioner. The State Board of Education shall notify the aggrieved employee within a reasonable time period in writing of the Board's decision.

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CHAPTER 14 -- GRIEVANCE PROCEDURE

009 Arbitration. At the time said appeal is filed pursuant to Step Four, the employee and/or representative and the Commissioner may mutually agree to submit the dispute to voluntary binding arbitration. Otherwise, the dispute shall be submitted to the State Board of Education.

009.01 Cases in which both parties do not choose to participate in voluntary binding arbitration shall be processed through the State Board of Education appeal process.

009.02 If both parties choose to submit the appeal to voluntary binding arbitration, they shall sign a waiver within ten (10) work days indicating they acknowledge that the decision of the arbitrator is final, except as provided in the Uniform Arbitration Act, and cannot be appealed.

009.03 The arbitrator's scope of review shall be to determine whether or not term(s) of these Personnel Rules has/have been violated, and whether the Department's action was taken in good faith and for cause. Arbitration hearings shall be informal and the rules of evidence shall not apply. The parties may be represented by attorneys in arbitration hearings. In cases involving discipline, the Department shall present its case first, and in all other cases the employee shall present his/her case first. The decision of the arbitrator shall be final and may not be appealed. The arbitrator shall decide the grievance in question based upon the issues presented in the written grievance filed pursuant to the grievance procedure. The arbitrator may interpret relevant provisions of the Personnel Rules and apply them to the particular case presented to him/her, but the arbitrator shall have no authority to add to, subtract from, or in any way modify the terms of the Personnel Rules. The fee and expenses of an arbitrator shall be borne equally by all parties. Arbitrators shall be selected from lists developed and mutually agreed upon by the parties. If the parties cannot agree upon an arbitrator, a method of alternate striking of names shall be employed.

009.04 The Commissioner or Deputy Commissioner shall have the authority to set time limitations for: the length of time within which an arbitrator must be chosen; the amount of time the parties will have to present their case (each party will receive the same amount of time); the time within which a case must be heard after an arbitrator is appointed; the length of time that will be allowed for the parties to submit post-hearing briefs; and the period of time after a hearing within which the arbitrator must enter his/her decision. Post-hearing briefs shall not be allowed in any case unless the parties and the arbitrator are all in agreement as to the need for such briefs.

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CHAPTER 14 -- GRIEVANCE PROCEDURE

009.05 The decision of the arbitrator shall be made in writing within sixty (60) calendar days of the hearing and shall include findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding and the Human Resources Office shall receive a copy of the decision by first class U.S. mail. The arbitrator's decision will become public record upon submittal to the parties. If the arbitrator does not render a decision within

ninety (90) calendar days from the date the arbitration hearing was held, a penalty of \$50 per day will be imposed and deducted from the arbitrator's fee for each day over ninety (90) calendar days the decision is late, until the decision is received. This penalty may only be waived upon mutual agreement of the parties.

009.06 Both parties must provide the other party and the arbitrator with a listing of all exhibits to be introduced at the hearing, a copy of each exhibit, and a listing of individuals that the party plans to call as witness(es) in the arbitration/hearing at least five (5) calendar days prior to the hearing. Such requests and/or notice shall be addressed to the party from which the discovery is sought. Only discovery requests which are relevant or would lead to relevant evidence for the grievance will be granted; however, in no case will discovery be granted which seeks evidence which is recognized as privileged by the Courts of this State. Discovery requests must be provided within ten (10) work days of the receipt of the request, unless objections are entered. Objections to discovery shall be made to the arbitrator, and the arbitrator shall consider the matter and issue a decision.

010 Number of Days. The number of days indicated in each step of the procedure shall be the maximum. Failure of the grievant to proceed to the next step within the maximum time limit shall be considered as termination of the grievance. Failure of the Department in any step to render a decision to the aggrieved employee(s) within the maximum time limits shall automatically allow the aggrieved person(s) to proceed to the next step.

"Days" shall mean regularly scheduled work days when the State Department of Education, Nebraska State Office Building offices, are open, excluding, however, such regularly scheduled work days during which employees involved in the procedure are absent from the work site on approved leave or travel status. For all employees who are permanently located at work sites other than 301 Centennial Mall South, Lincoln, Nebraska, days as defined above shall be counted from the date of receipt as stamped on the respective documents by Department mail handlers at each location. The day in which an item is received is not counted as a day for the receiving party.

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CHAPTER 14 -- GRIEVANCE PROCEDURE

Any time period established herein may be extended upon the written consent of the employee and the Deputy Commissioner.

011 Grievance Statement. The original Employee Grievance Statement shall remain unchanged throughout the grievance procedure. Copies of the grievance statement and response at each step shall be filed with the Human Resources Office by the grievant.

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CHAPTER 15 -- MISCELLANEOUS

001 Working Schedule. A schedule of working hours, which reflect individual job requirements, shall be determined by the appropriate Leadership Council Member and the immediate supervisor.

001.01 Change in Work Schedule. Supervisors shall provide ten (10) work days written notice to the affected employees prior to making changes in their permanent work schedules. The supervisor may temporarily change an employee's work schedule for cause without the ten (10) work day notification.

001.02 Lunch. Each day, employees shall have an unpaid lunch break of at least thirty (30) minutes and no more than sixty (60) minutes unless they are scheduled to work six (6) hours or less that day. If an employee is working six (6) hours or less and would like to forgo the lunch break, the supervisor can approve the request. Scheduling the time of the lunch break is subject to the approval of the immediate supervisor. Schedule requests shall not be unreasonably denied by the supervisor. Employees may not take a lunch break for a shorter period of time than one-half (1/2) hour. A lunch break may not be saved for use in shortening the work day.

001.03 Breaks. A rest break of fifteen (15) minutes may be taken each morning and each afternoon. Break time may not be saved for use in shortening the work day or in extending the lunch break. Rest breaks are considered work time.

002 Drug-Free Work Place. The unlawful manufacture, distribution, possession, or use of any illicit drugs or of alcohol is prohibited in the work place. Employees who violate the standards of conduct are subject to referral for prosecution.

002.01 Employees, who are convicted of a criminal-drug-statute violation occurring in the work place, shall be subject to disciplinary action up to and including termination; or, shall be required to satisfactorily participate in an approved drug/alcohol abuse or drug/alcohol rehabilitation program approved for such purposes by a federal, state, or local health law enforcement or other appropriate agency.

002.02 Temporary employees or contractors who are convicted of a criminal-drug-statute violation occurring in the work place shall be subject to termination of employment/contract; or, shall be required to participate satisfactorily in an approved drug/alcohol abuse or drug/alcohol rehabilitation program.

002.03 Conviction for any criminal-drug-statute violation occurring in the work place must be reported by the employee or contractor to the Human Resources Office no later than five (5) calendar days after the conviction.

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CHAPTER 15 -- MISCELLANEOUS

003 Harassment. Unlawful work place discrimination (harassment), based in whole or in part, on sex, race, color, religion, marital status, national origin, age, disability or protected activity (such as an employee's opposition to discrimination or participation in complaint proceedings) constitutes unlawful work place discrimination (harassment). Employees who commit unlawful work place discrimination (harassment) while performing duties for the Department may be subject to disciplinary action, up to and including dismissal from employment. Employees who make complaints or assist in investigations of unlawful work place discrimination (harassment) will be protected against retaliation.

003.01 Sexual Harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

003.01A Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

003.01B Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or,

003.01C Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

003.01D Sexual harassment does not include personal compliments welcomed by the recipient or social interaction, or relationships freely entered into by employees or prospective employees.

003.01E Behavior Constituting Sexual Harassment. In determining whether alleged conduct constitutes sexual harassment, the Department will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual behavior and the context in which the behavior occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis. Sexual harassment will not be permitted during the work day, nor will acts of sexual harassment be condoned outside the work environment if such are construed to encroach on the normal working relationship.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
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004 Political Activities. Unless specifically restricted by federal or state law, employees may participate in political activities except during office hours or when otherwise engaged in the performance of their official duties. Employees may not, however, participate in political activity using their status as a state employee to influence others.

005 Supervision of Relatives. Employees shall not be assigned to positions in which they directly supervise, evaluate, or review the appraisal of an immediate relative or to positions in which they are directly supervised, evaluated, or reviewed by an immediate relative. Immediate relative shall mean spouse, children (including step or adopted children), parents, son-in-law, daughter-in-law, grandchildren, grandparents, brothers, sisters, brothers-in-law, sisters-in-law, or persons bearing the same relationship to the spouse.

006 College Course Work During Work Time. Employees may request approval to take up to seven (7) credit hours each calendar year from colleges on the semester schedule or nine (9) credit hours each calendar year from colleges on the quarter schedule, but no more than four (4) credit hours may be taken in any one (1) semester or quarter during work time without loss of pay. Employees may attend courses as part of regular work time. Depending on the distance and location, travel time may also be considered regular work time. Prior approval of course work and/or related travel time during work hours must be obtained from the Deputy Commissioner. Requests and subsequent documentation must be submitted on a form provided by the Department. Requests shall be directed through the employee's immediate supervisor to the Human Resources Office. Any additional credit hours may be scheduled outside the normal working day. Approval under this Section shall not be unreasonably denied.

006.01 Reimbursement for Course Work Expenses. As an alternative to the above, employees may be eligible to receive not more than seven (7) credit hours each calendar year of tuition reimbursement for courses from colleges on the semester schedule or nine (9) credit hours each calendar year of tuition reimbursement for courses from colleges on the quarter schedule for job-related courses. Job relatedness shall be determined by the Deputy Commissioner, whose decision shall be final. Reimbursement may be for any portion of the tuition cost, required course fees, and books, with the employee being notified of the amount of reimbursement prior to the beginning of the course. Eligibility for reimbursement requires:

006.01A A course grade of "C" or better for undergraduate courses; or

006.01B A "pass" for pass/fail courses; or

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006.01C A course grade of "B" or better for graduate courses.

006.01D Requests for reimbursement and substantiating documentation must be made in writing prior to the beginning of the course on a form provided by the Department. Requests shall be directed through the employee's immediate supervisor to the Human Resources Office. Employees who receive tuition reimbursement

shall be required to reimburse the Department if they voluntarily leave their employment with the Department within one (1) year of the course completion date. The Department requires written documentation to verify enrollment including course dates and times, course completion and the grade earned.

006.02 Course Work Assignments. For employees who are directed to take job-related course work as part of their employment, the Department shall pay all costs of said course including tuition, books, and fees. Job relatedness shall be determined by the Deputy Commissioner whose decision shall be final. Employees may be considered to be working and may attend class, and travel to attend class, as part of regular work time. The Department may require written documentation to verify the employee's enrollment, course completion and grade earned.

006.02A Employees may use Department computers for on-line courses or homework if the employee has been directed to take the course per Section 006.02 of this Chapter and for job-related professional development.

007 Conference or Meeting Participation. In addition to the assigned activities of a staff member, the Department may approve a reasonable request of employees to participate in meetings, conferences, or staff development activities related to the employee's job. Determination of reasonable requests and job-relatedness shall rest with the appropriate Leadership Council Member. Upon approval of such a request, the employee may attend such meeting, conference, or staff development activity without loss of pay and at the expense of the Department. Additionally, an employee may be permitted to participate in at least one (1) meeting, conference, or staff development activity per year relating to the employee's job consisting of a total of not more than five (5) work days at the expense of said employee without loss of pay. All decisions made by management pursuant to the application of this Chapter are final.

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008 Solicitation Policy. Solicitating employees during work hours is not authorized.

008.01 Vendors offering non work-related products for sale to employees are not authorized to contact employees during the employee's duty hours nor to sell, promote, or distribute information on state property.

008.02 Employees who sell products for a secondary income may only contact other employees during non-duty hours.

008.03 Employees located at all other work sites may, upon the approval of the local

administrator, post information on products for sale, and non-duty contact times in locations provided for that purpose.

- 009 Worker's Compensation. All injuries, no matter how slight, occurring in the course of employment, are to be reported immediately to the supervisor and the Human Resources Office. An Employee Report of Alleged Occupational Injury Form (available from the Human Resources Office) must be completed and forwarded to the Human Resources Office by the employee as soon as reasonably possible. In the event that the employee is incapable of completing and signing the report, the employee's immediate supervisor shall complete the report to the best of his/her knowledge. The Employee Report of Alleged Occupational Injury shall be completed and signed by the employee at the earliest possible date.
- 010 Usage of State Telephone/Telecommunications Resources. Employees should exercise professional judgment in their use of business phones. The State telephone network is provided for official State business only. Long distance personal calls are not authorized and must be charged to one's resident telephone or personal credit card. Such calls may also be placed from a toll phone.
- 011 Non-Exempt Employee Travel Time. All required travel time between a non-exempt employee's permanent duty station or personal residence and an alternative work site to attend meetings, conferences, seminars, or training courses, whichever is shorter, shall be considered hours worked for pay purposes provided that an employee does not exceed normal travel time for the approved mode of transportation from point to point.
- 012 Personal Vehicles. When reasonably requested by the Department, or when requested by the employee and approved by the Department, employees may use their own automobile for work-related travel at a rate of reimbursement as agreed upon by the Department of Administrative Services.

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- 013 Lodging and Meal Reimbursement. The Department shall reimburse lodging and meal expenses as agreed upon by the Department of Administrative Services.
- 014 Lodging Arrangements. Single occupancy lodging shall be made available to any employee traveling on Department business unless the employee(s): waives the option, prefers multiple accommodation lodging, or lodging availability in the town precludes single occupancy.
- 015 Transportation. Employees including full-time, part-time, contract, temporary and fixed-term, as defined in Chapter 4, may be authorized to use a State vehicle on official State business. State vehicles are not to be used for personal uses.

015.01 Valid Driver's License Requirement. All persons who operate State or

personal vehicles while on Department business are required to have a valid driver's license and to successfully complete a defensive driving course as offered by the State. Should persons who drive on Department business have their driver's license revoked or suspended for any reason, the employee must report such revocation or suspension to their immediate supervisor.

015.02 Supervisor Responsibility. It shall be the responsibility of each Leadership Council Member to ascertain that each person who drives on Department business possess a current valid driver's license and has satisfactorily completed a Defensive Driving Course, as prescribed. This responsibility may be delegated to the section head or person in a division who has the responsibility to authorize/permit use of a vehicle on Department business.

016 Employment Outside of Working Hours. Employees may engage in employment outside of working hours in a private business interest. Such employment outside of Department work or in a private business interest shall not interfere with the efficient performance of duties or conflict with the interests of the Department of Education or with State statutes. The Department may require disclosure of outside employment.

017 Moving Allowance. Employees transferring to or relocating in another geographic section of the State as a part of their employment with the Department shall be eligible for reimbursement of moving expenses pursuant to Department of Administrative Services guidelines, upon approval of the Commissioner or his or her designee.

017.01 Payment. No payment of moving expense shall be made until an invoice is received and approved by the Commissioner or his or her designee.

017.02 Leave. Employees who are transferred to or relocating in another geographical location of the State shall be allowed sixteen (16) hours with pay to attend to their personal affairs in their present location and to

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establish their personal affairs in their new location. Additional required time off shall be vacation leave, compensatory time, or leave without pay at the employee's discretion.

017.03 Commuting Costs. Commuting costs related to transfers and relocations are not reimbursable by the Department.

018 Severability. If any section or portion of the Chapters in this Title, or the applicability thereof, to any person or circumstance is held to be invalid by a court, the remainder of these Chapters shall not be affected thereby.

019 Recognition Programs. The Commissioner may implement an Employee Recognition Program, which may include items such as Employee-of-the-Year/Manager-of-the-Year meals; framed certificates; clocks; bookends; platters; desk accessories; pens; letter openers; gift certificates; food and refreshments; trophies; shirts; plaques, pins, and/or monetary recognition.

- 020 Business Attire. All employees are expected to dress in attire that is appropriate for conducting his or her work responsibilities. Leadership Council Members and supervisors may identify specific attire requirements depending on the nature of the employee's work.
- 021 Retiree Health Insurance. In addition to the provisions outlined in Neb. Rev. Stat. §§84-1601 through 84-1615, employees who are eligible for retirement and do retire, shall be afforded the opportunity to continue health insurance coverage in the group plan until they become Medicare eligible. The employee shall be responsible for the entire cost of the premium for the plan chosen, which includes the normal employee contribution and the normal State contribution.

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001 General. Employees shall comply with the Code of Ethics as provided in this Chapter.

002 Nebraska Political Accountability and Disclosure Act. Employees shall comply with the Nebraska Political Accountability and Disclosure Act, which provides that:

002.01 No person shall offer or give anything of value, including a gift, loan, contribution, reward, or promise of future employment, based on an agreement that the vote, official action, or judgment of any public official, public employee, or candidate would be influenced thereby, to the following persons:

002.01A A public official, public employee, or candidate;

002.01B A member of the immediate family of an individual listed in Subsection 002.01A of this Chapter; or,

002.01C A business with which an individual listed under Subsection 002.01A or 002.01B of this Chapter.

002.02 No person listed in Subsection 002.01A of this Chapter shall solicit or accept anything of value, including a gift, loan, contribution, reward, or promise of future employment, based on an agreement that the vote, official action, or judgment of the public official, public employee, or candidate would be influenced thereby.

002.03 No employee shall use or authorize the use of any of the following for personal financial gain, financial gain of a member of his or her immediate family, or financial gain of a business with which he or she is associated, other than compensation provided by law:

002.03A That person's position or any confidential information received through the holding of their position; or,

002.03B Personnel, resources, property, or funds under that person's official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures.

003 Impairing Independent Judgment. Employees are additionally prohibited from accepting other employment which will impair independence of judgment in the exercise of official duties.

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- 004 Securing Unwarranted Privileges. Employees are additionally prohibited from using, or attempting to use their position in the Department to secure unwarranted privileges or exemptions for themselves or others.
- 005 Conflict of Interest. Employees are additionally prohibited from engaging in any transaction as representatives or agents of the Department with any entity in which direct or indirect financial interests might reasonably tend to conflict with the proper discharge of official duties.
- 006 Personal Investments. Employees are additionally prohibited from making personal investments in enterprises which might be directly involved in decisions to be made by them as employees of the Department.
- 007 Selling Goods or Services. Employees are additionally prohibited from selling goods or services to any persons, firms, corporations, or associations which are licensed or whose rates are fixed by the Department, or from having any substantial interest in persons, firms, corporations, or associations which sell goods or services to other persons, firms, corporations, or associations which are licensed by the Department.
- 008 Partnerships. Employees are additionally prohibited from accepting, or agreeing to accept, or being in partnership with any persons who accept or agree to accept any employment, fees, gifts, or services for taking any action on behalf of the other persons regarding licensing or regulatory matters before the Board.
- 009 Business Transactions. Employees are additionally prohibited from entering into any private business transactions with any persons or entities that have matters pending or to be pending, upon which such employees are, or will be, called upon to render decisions or pass judgments in an official capacity as representatives of the Department. If any such employees are already engaged in the business transactions at the time the matters arise, they shall be disqualified from rendering any decisions or passing any judgments upon the same.
- 010 Vested Interest in Contracts. Employees are additionally prohibited from influencing the making of any contracts, or courses of action leading to the making of contracts, between the Department and persons, firms, corporations, or associations in which they may have a direct or indirect vested interest.
- 011 Gifts or Loans. Employees are additionally prohibited from accepting any gifts of value or loans from any person doing business with the Department. Gifts or favors are to be courteously refused or returned if they are the kind that might influence the conduct of employees.

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- 012 Employee Consulting, Presentations and Speeches. Periodically, employees are asked to consult or to make presentations or speeches in their area of expertise. When such a request is received, the employee involved shall discuss the request with the appropriate

Leadership Council Member through their immediate supervisor. If it is determined that providing the consultation or making the presentation or speech will relate to the service, leadership, or regulatory functions of the Department, then any expenses incurred should be reimbursed from the program's budget.

013 Honorariums. If an honorarium is received for consulting or making a presentation or speech, while on Department time and/or on a (work-related) subject area for which the employee has responsibility in the Department, the honorarium shall be submitted to Central Accounting for deposit against the employee's line of coding. In this instance, the Department shall be responsible for employee expenses.

014 Private Consulting. The following restrictions apply to employees providing private consultation services on personal time:

014.01 Employees may not provide outside consulting services for compensation (monetary or non-monetary) to any entity coming under the supervision or regulation of the Department.

014.02 Employees may not provide outside consulting services for compensation (monetary or non-monetary) to any agency within the state for which the service is available from the Department without charge.

014.03 All consulting activities shall require the use of personal vacation time with prior approval of the immediate supervisor and appropriate Leadership Council Member. Approval of the use of vacation time will be based on the extent to which regular duties are not compromised. Approved consulting may not be done in conjunction with any Department related activity and/or travel.

014.04 Employees may not solicit or invite consultative service opportunities for private or personal gain during the discharge of duties as a State employee.

014.05 Employees may not use State resources or products for private consulting even if the cost of such are paid to the State from outside sources.

015 Teaching. College or university teaching is allowed whenever the following conditions are met:

015.01 The employee has received approval of their immediate supervisor and the appropriate Leadership Council Member; and

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015.02 Such teaching, preparation, and other activities associated with the teaching duties, shall take place totally outside the regular duty hours of the employee; and

015.03 The employee has received advance approval of vacation time for such

teaching including duty hours spent in travel, preparation, and other activities associated with the teaching duties. Whenever vacation time is used, the outside teaching responsibilities must not interfere or limit the performance of the duties and responsibilities required by the Department; and,

015.04 There is a written agreement between the institution of higher education and the employee outlining the terms and conditions of their teaching and such agreement has been approved by the immediate Department supervisor and is on file in that supervisor's office and in the Human Resources Office; and/or,

015.05 Teaching assignments may be approved or assigned as part of the employee's regular duties. Additional compensation may not be accepted when teaching duties are part of the employee's regular work day.

016 Professional Organization Membership. Employees may be granted time during work hours to participate in the activities of professional organizations which, in the estimation of the appropriate Leadership Council Member, are considered to be job-related. The appropriate Leadership Council Member shall determine whether or not travel expenses shall be reimbursed.